

REMARKS

Claims 1-4 are pending. By way of the foregoing amendment, claims 1-4 have been amended and new claim 5 has been added. Support for the foregoing amendment can be found throughout the specification and claims as originally filed, for example on page 15, lines 8-12. No new matter enters by way of this amendment. Upon entry of the foregoing, claims 1-5 will be pending.

1. Restriction/Election

Applicants acknowledge and thank the Examiner for withdrawing the restriction requirement mailed March 27, 2006 and rejoining the claims of groups I and II. Applicants acknowledge that claims 1-4 are pending.

2. Priority

The Examiner indicates that “[b]ecause the inventions of claims 1-4 were disclosed in provisional application 60/400,305, the effective filing date of the instant application is that of the provisional application, i.e. August 1, 2002.” *See*, Office Action at page 2. Applicants acknowledge the Examiner’s stated position that the effective filing date of the instant claims is August 1, 2002.

3. Information Disclosure Statement

Applicants acknowledge and thank the Examiner for indicating that the Information Disclosure Statement filed January 7, 2005 has been considered in part and returning an Examiner initialed copy of the Form PTO/SB/08A.

The Examiner indicates, however, that the “information disclosure statement filed on 22 October 2004 fails to comply with 37 CFR 1.98(a)(2),” because the “O’Brien et al reference contained in the IDS appears to have been cut off at the bottom and right edge of the page, and is thus not fully legible.” Office Action at pages 2-3. Applicants respectfully apologize for the illegible reference and submit a Supplemental IDS, including a legible copy of the O’Brien, *et al.* reference originally provided in the IDS filed October 22, 2004.

4. Objections to the Claims and Specification

The Examiner has objected to claim 2 for allegedly containing “a period within the middle of the sentence.” Office Action at page 3. Applicants have amended the claim to remove the period following the recitation of “*citrulli*”. As such, Applicants request this objection to claim 2 be withdrawn as moot.

The specification has been objected to for purportedly containing non-capitalized trademarks. Office Action at page 3. Applicants have amended the specification to capitalize the identified trademarks. In light of these amendments, applicants respectfully request withdrawal of the objection to the specification.

5. Rejections under 35 U.S.C. § 112, second paragraph

Claims 2-3 are allegedly indefinite in the recitation of “primers comprising...(SEQ ID NO:1 and (SEQ ID NO: 2).” *Id.* at page 4. In view of the amendment to claims 2-3, Applicants respectfully request reconsideration and withdrawal of this rejection. Claim 2 is allegedly indefinite in the recitation of “the amplification product(s)”¹. *Id.* Claim 3 is allegedly indefinite because several terms allegedly lack antecedent basis. *Id.* The Examiner also alleges that claim 3 indefinite because the recitation “comparing the amount of amplification product(s) or absence of amplification products in the second test sample to the amount of amplification products detected in the first test sample in step (d) as an indication of whether or not the treatment has been successful in reducing or eradicating *Acidovorax avenae* subsp. *Citrulli* in the seed lot” in step (j) is unclear. Claim 4 is allegedly indefinite in the recitation of “a primer set comprising oligonucleotides having the sequence comprising of...(SEQ ID NO: 1) and ... (SEQ ID NO: 2).” *Id.* at page 5. Applicants respectfully disagree, however to facilitate prosecution Applicants have amended claims 2-4. In view of these amendments, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

¹ Applicants have amended claims 2 and 3 to refer to one or more amplification products.

6. Rejections under 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Schaad *et al* (U.S. Patent No. 6,146,834. Office Action at page 6. Applicant respectfully disagrees.

For a prior art reference to anticipate in terms of 35 U.S.C. § 102, each and every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988). Indeed, it is well-established law that an anticipatory reference “must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it”. *In re Paulson*, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 708, 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990). The Office has not demonstrated that Schaad *et al.* teaches each and every element of the claimed invention, and therefore the anticipation rejection is improper.

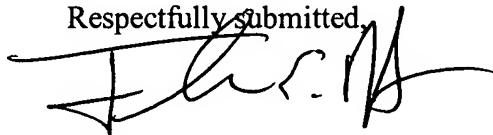
The Office alleges that “the primer sets of Schaad et al contain sequences present in the instant SEQ ID Nos 1 and 2, the primer sets of Schaad et al are sufficient to meet the requirements of the instant claim.” Office Action, at page 6. The Examiner argues that “the claim as written is sufficiently broad so as to encompass a primer set comprising any sequences contained within SEQ ID Nos 1 and 2 (for example, any primer set in which one primer includes any dinucleotide found in instant SEQ ID NO: 1 and another primer comprises any dinucleotide found in SEQ ID NO: 2, etc.).” *Id.* The Examiner has applied an untenable interpretation of the claims to cover small fragments of SEQ ID NOs 1 and 2 as small as 2 nucleotides. Whatever else Schaad *et al.* does disclose, it does not disclose or even suggest a primer set comprising sequences of 5'-CGCGCCGACCGAGACCTG - 3' (SEQ. ID NO:1) and 5'-GGGGCACGCCAACATCCT -3' (SEQ. ID NO:2). Accordingly, Schaad *et al.* fails to teach each and every element of the claimed invention, and therefore does not anticipate claim 1.

Accordingly, for at least the foregoing reasons, the rejection of claim 1 under 35 U.S.C. § 102(b) over Schaad *et al.* is improper. Reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding objection and rejections of the claims, and to pass this application to issue. The Examiner is encouraged to contact the undersigned at (202) 942-5085 should any additional information be necessary for allowance.

Respectfully submitted,



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